

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

JULIO GONZALEZ,	)	
	)	
Petitioner	)	
	)	
vs.	)	CAUSE NO. 3:05-CV-177RM
	)	(Arising from 3:99-CR-42(2) RM)
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent	)	

OPINION AND ORDER

On June 30, Julio Gonzalez moved this court for appointment of counsel on appeal and on July 5, Mr. Gonzalez moved the court to withdraw this motion and to issue him a certificate of appealability. For the reasons below, the court denies both motions.

In regards to Mr. Gonzalez's motion for a certificate of appealability, the court notes that Mr. Gonzalez seeks to appeal the denial of his § 2255 petition, which was based on Mr. Gonzalez's waiver of his right to file such a petition. Issuance of a certificate of appealability requires the court to find that Mr. Gonzalez has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). He has not done so. In his plea agreement, Mr. Gonzalez waived his right to file a petition under § 2255, and he hasn't alleged or advanced any claims relating to the negotiation of his plea agreement. See Jones v. United States, 167 F.3d 1142, 1145 (7th Cir. 1999) ("[T]he right to mount a collateral

attack pursuant to § 2255 survives only with respect to those discrete claims which relate directly to the negotiation of the waiver.”).

As to Mr. Gonzalez’s motion to appoint counsel and subsequent request to withdraw that motion, the record in this case has already been sent to the court of appeals. Therefore, both motions are improperly filed with this court.

For the reasons set forth above, the court DENIES Mr. Gonzalez’s motion [Doc. Nos. 5 & 7 in civil cause no. 3:05-CV-177].

SO ORDERED.

ENTERED: July 13, 2005

/s/ Robert L. Miller, Jr.  
Chief Judge  
United States District Court

cc: J. Gonzalez  
D. Schmid